IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 98 of 1989

Date of decision: 04/05/2005

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

ARVINDBHAI SUNDARLAL SHAH

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

Appearance:

1. First Appeal No. 98 of 1989
MR MD PANDYA for Appellant No.
MR BR PARIKH for Respondent No. 1

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

This appeal is directed against the award of the MACT No. IV (Main) Ahmedabad in MACP No. 62 of 1985 dated January 29, 1988.

Whether reporters of Local Papers may be allowed to see the Judgment?

Shortly stated, accident took place on 22.10.1984 at 10.30 a.m. near Museum Cross Roads in Paldi locality at the end of Sardar Bridge when scooter bearing No. GAC 3300 was hit by the ST Bus bearing No. GRU 6233. Allegation is that the accident took place due to rash and negligent driving of the bus by its driver. As a result of the accident, claimant suffered number of injuries. Consequently, compensation of Rs.2,00,000.00 is claimed. On behalf of the opponents, it is submitted that the bus was being driven on the correct side of the road with moderate speed. At the site of accident, claimant came with excessive speed on his scooter and front portion of which hit the rear portion of the bus. In the alternative, it is stated that the claimant contributed in the accident. Other averments have been denied.

After evidence and hearing the parties, Claims Tribunal held that the claimant suffered bodily injuries in this accident which was caused due to rash and negligent driving of the bus by its driver. Claimant did not contribute to the taking place of accident. Consequently, compensation of Rs.90,423.00 carrying interest at the rate of 12% p.m. from the date of application till the date of payment is awarded. Appellants being dissatisfied with this award, challenges it through this appeal.

First ground for challenge is that the claimant contributed to the taking place of accident. Submission to this effect was made before the tribunal which rejected it after taking into consideration the evidence of the claimant and panchanama (Exh. 56) and thereby rejecting evidence of the bus driver. Finding recorded by the tribunal is sustainable on available evidence, above all, it is bus driver who was prosecuted before the criminal court which convicted him of the offence charged with. This finds place in the statement of the bus driver. Next ground is the quantum of compensation. After accident, the claimant was examined by Dr. Patel clinically and radiologically. Relevant part of his evidence is recorded in para 24 of the judgment which is reproduced as under:

""O/E 1. Walks with limp.

2. Shortening of right leg by 3 1/2 cms.

3. Scars - 15 cms. long over right iliac crest.

- 10 cms 8 cms medial as aspect of M/3 right leg.

- Six scars on both medial & lateral aspect of U/ a and L/3 and of right leg.

- Liner scar over anterior aspect of whole right leg.

4. Three sinuses over anterior aspect of right leg.

5. Hyposthesia medial aspect of L/2 of right leg.

6. Right ankle movements -dorsiflexion 5' (20' on left side) Planterflection 25 (35' on left side).

7.Musculaar strength (Rt) Kg(Lt) Kg.

Knee flexors 13 14

Extensors 10 12

Ankle dorsilfoxors 8 12

Planterflexors 8 12" "

From perusal of the above quoted statement of the Doctor that the permanent partial disability was to the extent of 27.6%, apart from the statement of the claimant as to the nature of accident and treatment taken by the claimant, assessment of compensation is justified with respect to working out of compensation against the income of Rs.1317.65 ps. p.m. and it cannot be said to be excessive particularly when the multiplier of 15 us applied instead of 17 as per the IInd Schedule of the Motor Vehicles Act.

Consequently, we find no merit in this appeal and the same is rejected leaving the parties to bear costs of

this court. Claims Tribunal will release the compensation to the Claimant on proper verification, by way of an account payee cheque.

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K.RATHOD]
JUDGE

Vyas